



JOHN NAIMO
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

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TO: Supervisor Michael D. Antonovich, Mayor
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

FROM: John Naimo 
Auditor-Controller

SUBJECT: **DETERMINATION THAT THE OFFICE OF INSPECTOR GENERAL IS
SUBJECT TO THE HEALTH OVERSIGHT EXCEPTION OF THE
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

The Chief Health Insurance Portability and Accountability Act (HIPAA) Privacy Officer (CHPO), following consultation with County Counsel, has determined that certain activities of the Office of Inspector General (OIG) are subject to the health oversight exception of HIPAA. Specifically, the scope and nature of the OIG's responsibilities are such that it cannot carry out the oversight functions mandated by the Board of Supervisors without accessing information related to health and mental health services provided to individuals in the Sheriff's custody.

The CHPO and County Counsel will work with the OIG to ensure that it is compliant with HIPAA and related County policies, including by making available HIPAA training to OIG staff who will access such information. The attached document provides background information on the applicable HIPAA regulations and our analysis.

If you have questions, please contact me or Linda McBride, CHPO, at (213) 974-2166.

JN:RGC

Attachment

c: Sachi A. Hamai, Interim Chief Executive Officer
Patrick Ogawa, Acting Executive Officer, Board of Supervisors
Max Huntsman, Inspector General
Mark J. Saladino, County Counsel
Mitchell H. Katz, M.D., Director, Department of Health Services
Marvin J. Southard, D.S.W., Director, Department of Mental Health

**Applicability of the Health Insurance Portability and Accountability Act to the
Los Angeles County Office of Inspector General**

The Health Insurance Portability and Accountability Act (HIPAA) is a federal law requiring County conformance to the Privacy and Security Rules. The December 3, 2013 Board letter and ordinance (2014-0034) which established the Office of Inspector General (OIG) states that its mission and duties are to oversee and monitor the Sheriff's Department operations, including reviewing sensitive issues such as conditions of the jails, the inmate complaint process, allegations of misconduct, and quality audits. Section (f) of the ordinance states that the Sheriff's Department (Sheriff's) and all other County departments shall cooperate with the OIG and promptly supply any information or records requested by the OIG.

In terms of HIPAA, the Department of Mental Health (DMH) workforce members who are housed at the jails provide mental health care to the inmates and make entries in the inmates' medical records. These medical records are DMH records. DMH staff inputs information and has access to the records and the Sheriff's is the custodian of the records. Because DMH is a HIPAA covered department and part of the County's health care component, protected health information (PHI) in DMH medical records cannot be shared unless there is a specific exception set forth in the Privacy Rule or authorization by the patient.

An applicable exception in the Privacy Rule is whereby a covered entity may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight.¹ This includes entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or entities subject to civil rights laws for which health information is necessary for determining compliance.²

The ordinance that created the OIG within the Executive Office of the Board of Supervisors charges the OIG with monitoring the Sheriff's Department's operations, conditions in the jail facilities, and inmate and public complaints related to the Sheriff's Department. If any of those complaints are connected to inmate and/or workforce member complaints related to health and mental health services, OIG will need access to inmate medical records. These activities indicate that OIG is performing a function that falls within the health oversight activities exceptions of the Privacy Rule. As such, the OIG may request the cooperation of DMH and the Department of Health Services (DHS), and may review inmate medical records maintained by these departments subject to the minimum necessary rule,³ among other HIPAA standards that may apply on a case-by-case basis. DMH, DHS, and other County health care component

¹ 45 C.F.R. §164.512(d)

² 45 C.F.R. §164.512(iv)

³ 45 C.F.R. §164.502

departments are permitted to provide PHI to the OIG subject to the Privacy Rule and departmental policies.

Another HIPAA standard that is on point with the OIG's function is that a covered entity is not considered to have violated the requirements of the Privacy Rule if a member of its workforce or a business associate discloses PHI, provided that: (i) The workforce member or business associate believes in good faith that the covered entity has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more patients, workers, or the public; and (ii) The disclosure is to: (A) A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered entity or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or (B) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct.⁴

⁴ Ibid.